

## **CUSTODY AND TRESPASS**

**5024**

(May 1988)

As the custodian of the state forests, the department has the responsibility to protect such properties from damage and nuisance.

In general, a trespass is the unauthorized entry upon property or its destruction or use in some manner not consented to by the owner. A nuisance is anything that is injurious to health, offensive to the senses, or interferes with complete enjoyment of life or property by any considerable number of persons. A public nuisance, which may become the state's responsibility to abate, may be the result of trespass committed by users of forestland, e.g., garbage scattered around campgrounds by campers. Laws pertaining to trespass, damage, and nuisance include CC §3346 and 3480; CCP §733; PC §370, 384a, 487b and c, 602 and 605; and PRC §4726. Any case of trespass resulting in wrongful injuries to timber, trees or underwood, or any other trespass of a substantial nature will be brought to the attention of the director, in complete detail, without delay (see Section 5024.1). This instruction is not intended to supersede criminal law enforcement procedures but is in addition thereto.

### **TIMBER TRESPASS**

**5024.1**

(May 1988)

In cases of timber trespass, CC §3346 provides for treble damage except under certain circumstances when double or single damages are appropriate. Under this, the state is bound to collect damages as specified therein. Department employees cannot forgive any indebtedness due to state.

Reports to the director of timber trespass should include who committed the trespass, the time of trespass, the disposition of the material taken, the volume and stumpage value of the forest products involved, and any other pertinent information or action initiated.

Settlement or disposal of damaged property cannot be arranged in the field without approval of the director because timber trespass cases will in most instances involve other state agencies such as the Department of General Services and the Attorney General's office.

### **STRAY ANIMAL TRESPASS**

**5024.2**

(May 1988)

Livestock should not be permitted to range over state forestland except under some approved grazing permit. PRC §4656 provides that the use of state forestlands for grazing purposes will be permitted only under rules and regulations established by the board. Grazing has not been encouraged in conjunction with other uses, and no rules or regulations for grazing use have been adopted ([see Section 5052](#)).

## **Lawful Fence**

According to Agriculture Code §17121, a lawful fence is any fence which, by reliable evidence, is good, strong, substantial, and sufficient to prevent the ingress and egress of livestock. A good and substantial wire fence must have at least three tightly stretched barbed wires securely fastened to posts of reasonable strength firmly set in the ground not more than one rod apart. One of the wires will be at least four feet above the surface of the ground. A lawful fence may include cattle guards of such width, depth, rail spacing, and construction as will, by reliable evidence, effectively turn livestock.

## **Corrective Action**

Stray animals can be herded off state property if it will accomplish any good; however, it would not be wise to be the person responsible for putting them free upon a public highway.

## **Corrective Action**

Another proper step would be a friendly notification (continued) to the owner to keep them off (except that in the "no-fence counties" of Shasta, Trinity, Modoc, Lassen, or Siskiyou, the department would have no legal support if it came to a test).

Actual damages resulting from stray livestock may be claimed through court action.

Other than in the "no fence counties," livestock of unknown ownership may be impounded and the cost of their care recovered by the Director of Food and Agriculture in accordance with §17041-17045 Agriculture Code. Notice of impoundment must be made to the Director of Food and Agriculture within five days.

Promptly notify the owner if any stock of known ownership is impounded for safekeeping or self-protection.

The best advice for handling an aggravated situation is to consult with a local hide and brand inspector of the State Department of Food and Agriculture and seek legal and other assistance from the director's office as needed.

**FORMS AND/OR FORMS SAMPLES: RETURN TO ISSUANCE HOME PAGE FOR FORMS/FORMS SAMPLES SITE LINK.**

[\(See next section\)](#)

[\(See Table of Contents\)](#)